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7 Attorneys for Defendant
JOHN COTA

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,

14 v.

15 M/V COSCO BUSAN, LR/IMO
SHIP. NO. 9231743 HER
16 ENGINES, APPAREL,
ELECTRONICS, TACKLE,
17 BOATS, APPURTENANCES, etc.,
in rem, THE SHIP OWNERS'
INSURANCE & GUARANTY
18 COMPANY LIMITED, REGAL
STONE, LIMITED, FLEET
19 MANAGEMENT LIMITED, and
JOHN COTA, *in personam*,

20 Defendants.
21

Case No.: NO. C-07-06045-SC

NOTICE OF JOINDER AND JOINDER IN
MOTION TO DISMISS AND STAY
PROCEEDINGS; MEMORANDUM OF POINTS
AND AUTHORITIES

DATE: MAY 9, 2008
TIME: 10:00 AM
COURTROOM: 1

THE HON. SAMUEL CONTI

COMPLAINT FILED: Nov. 30, 2007
TRIAL DATE: NONE SET

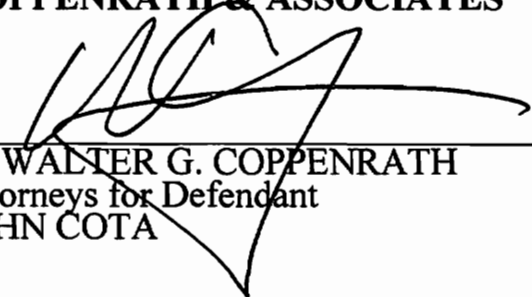
22
23 **TO ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL**
24 **OF RECORD:**

25 **PLEASE TAKE NOTICE** that Defendant JOHN COTA hereby joins
26 in the Motion to Dismiss and Stay Proceedings previously filed by Defendants
27 REGAL STONE, LIMITED and FLEET MANAGEMENT, LIMITED (hereinafter
28

1 collectively REGAL). This Joinder is made upon the grounds set forth in
2 REGAL's Motion, and in the following Memorandum of Points and Authorities.

3
4 Dated: April 17, 2008

5 **COPPENRATH & ASSOCIATES**

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7 By 
8 WALTER G. COPPENRATH
9 Attorneys for Defendant
10 JOHN COTA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendant JOHN COTA was the pilot aboard the vessel MV/COSCO
 4 BUSAN at the time of the November 7, 2007 allision alleged in the Complaint. He
 5 is named as a defendant only in the First Cause of Action (National Marine
 6 Sanctuaries Act, 16 USC § 1436 *et seq.*) and Fifth Cause of Action (Park System
 7 Resource Protection Act, 16 USC § 19jj *et seq.*). He is not named as a defendant in
 8 those Causes of Action seeking recovery under the Oil Pollution Act of 1990, 33
 9 USC § 2701 *et seq.* (hereafter “OPA”)¹ or the Sixth Cause of Action brought
 10 pursuant to the Federal Water Pollution Control Act.

11
 12 **DISMISSING OR STAYING THESE PROCEEDINGS AGAINST DEFENDANT JOHN COTA**
 13 **PROMOTES THE ENDS OF JUSTICE AND CONSERVES JUDICIAL RESOURCES**

14 As noted in the moving papers, given the circumstances of the incident
 15 alleged in the Complaint, the remediation/restoration damages sought by the United
 16 States under the National Marine Sanctuaries Act (“NMSA”), Park System
 17 Resource Protection Act (“PSRPA”), and OPA essentially overlap, and are
 18 effectively subsumed within the latter statute's claims protocol. Since there can be
 19 no double recovery of these damage claims (33 USC § 2706(d)(3)) and since
 20 moving parties are apparently already appropriately responding to them, if the
 21 pending litigation is dismissed or stayed as to Defendants REGAL STONE,
 22 LIMITED and FLEET MANAGEMENT, LIMITED, it would defy judicial
 23 economy and simply make no sense to continue these proceedings against
 24 Defendant JOHN COTA alone.

25 / / /

26 / / /

27 ¹ Indeed, it has been held that vessel personnel are not “operators” within the
 28 contemplation of OPA, and hence not within its liability net. *Green Atlas Shipping SA v. United States*, 306 Fed. Supp. 2d 974 (D. Or., 2003).

1 The Court is vested with inherent power to grant a stay. According to
 2 the Ninth Circuit in *CMAX, Inc. v. Hall*, 300 Fed. 2d 265 (9th Cir, 1962) at page
 3 268:

4 A district court has inherent power to control the
 5 disposition of the causes on its docket in a manner which
 6 will promote economy of time and effort for itself, for
 7 counsel, and for litigants. The exertion of this power
 8 calls for the exercise of a sound discretion. Where it is
 9 proposed that a pending proceeding be stayed, the
 10 competing interests which would be affected by the
 11 granting or refusal to grant a stay must be weighed.
 12 Among these competing interests are the possible
 13 damage which may result from the granting of a stay, the
 14 hardship or inequity which a party may suffer in being
 15 required to go forward, and the orderly course of justice
 16 measured in terms of the simplifying or complicating of
 17 issues, proof, and questions of law which could be
 18 expected to result from a stay. [citation omitted]

19 Here, in the event the Court grants the pending motion, and stays
 20 further proceedings against Defendants REGAL STONE, LIMITED and FLEET
 21 MANAGEMENT, LIMITED pending resolution of the OPA claims procedures, it
 22 is difficult to imagine any resultant prejudice to the United States in granting a co-
 23 extensive stay to Defendant JOHN COTA. On the other hand, if such a stay is not
 24 extended to this defendant, the prejudice against JOHN COTA would be palpable.
 25 At a minimum, he would incur substantial costs in defending himself against claims
 26 necessarily subsumed and resolved through the OPA remediation/restoration
 27 procedures already underway. As for conservation of judicial resources, it presently
 28 appears that staying the entire action pending resolution of the OPA claims process
 may very well be dispositive of the entire action.

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CONCLUSION

Defendant JOHN COTA respectfully submits that the pending motion by Defendants REGAL STONE, LIMITED and FLEET MANAGEMENT, LIMITED is meritorious, and that the dismissal and/or stay requested therein should be granted. Moreover, he respectfully submits that, in the event the NMSA and PSARA Causes of Action are stayed as to Defendants REGAL STONE, LIMITED and FLEET MANAGEMENT, LIMITED, they should be similarly stayed as to this defendant.

Dated: April 17, 2008

COPPENRATH & ASSOCIATES

By 

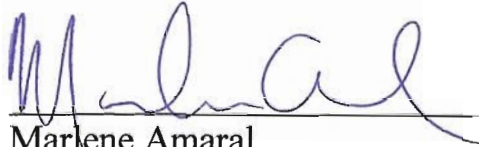
WALTER G. COPPENRATH
Attorneys for Defendant
JOHN COTA

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF JOINER AND JOINER IN MOTION TO DISMISS AND STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES** was served on the following on April 17, 2008 through the Court's CM/ECF:

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EXECUTED on April 17, 2008 at Long Beach, California.


Marlene Amaral